

36186
SEC

SERVICE DATE – SEPTEMBER 7, 2005

SURFACE TRANSPORTATION BOARD

DECISION

Finance Docket No. 29963

BAY COLONY RAILROAD CORPORATION–
MODIFIED RAIL CERTIFICATE

STB Finance Docket No. 34698

BAY COLONY RAILROAD CORPORATION–
PETITION FOR DECLARATORY ORDER

Decided: September 6, 2005

On April 13, 2005, the Massachusetts Bay Transportation Authority (MBTA) filed a Notice of Termination of Operating Authority of the Bay Colony Railroad Corporation (Bay Colony). Bay Colony has been operating the 3.4-mile Millis Industrial Track between Medfield Junction (milepost 0.0) and the end of the line in Millis (milepost 3.4) in Norfolk County, MA, under a modified certificate of public convenience and necessity that was issued on September 24, 1987, pursuant to 49 CFR 1150.23. Bay Colony has been operating the line under a lease and operating agreement with MBTA, the owner of the line.

On May 2, 2005, Bay Colony filed a petition in Finance Docket No. 29963 to dismiss MBTA's notice. Bay Colony concurrently filed a petition for declaratory order in STB Finance Docket No. 34698, asking the Board to determine that: (1) MBTA's notice is invalid and ineffective to terminate its authority to operate the line; (2) Bay Colony has a regular certificate of public convenience and necessity, not a modified certificate, to operate the line; (3) MBTA can terminate Bay Colony's operating rights only by an adverse abandonment proceeding; and (4) Bay Colony is the successor in interest to, and the current holder of, an easement affording Bay Colony the right to provide freight service on the line.

A decision served on May 25, 2005, granted MBTA an extension until May 31, 2005, to file its responses to Bay Colony's petition to dismiss. A decision served on June 1, 2005, granted MBTA's request to hold Finance Docket No. 29963 in abeyance until either it or Bay Colony gives notice that it wishes the proceeding to go forward. MBTA indicated that it and

Bay Colony wished to explore settlement of the issues raised in Bay Colony's petition. The decision directed the parties to report on the status of their negotiations by July 1, 2005.

On July 1, 2005, MBTA and Bay Colony reported on the status of their ongoing negotiations and requested that the related proceedings be held in abeyance until either of them gave notice that a negotiated resolution does not appear to be feasible and that it wishes either or both proceedings to go forward.

By decision served on July 11, 2005, MBTA and Bay Colony's request was granted to hold the related proceedings in abeyance. The parties were directed to report on the status of their negotiations by September 1, 2005.

On September 1, 2005, MBTA and Bay Colony reported that they have made substantial progress during the negotiation period and anticipate that, within the next several days, an assignment of easement rights with respect to freight operations on the Millis Industrial Track will be executed and delivered to Bay Colony. MBTA and Bay Colony state that the parties have prepared and are continuing to review a draft of a trackage rights agreement that would supplement the easement and that they anticipate will be in final form within the next several weeks. Given these developments, MBTA and Bay Colony request that these proceedings continue to be held in abeyance.

Good cause exists for granting the request to continue to hold these related proceedings in abeyance. The parties are directed to report on the status of their negotiations by November 1, 2005.

It is ordered:

1. MBTA and Bay Colony's request to continue to hold these proceedings in abeyance is granted. The parties are directed to report on the status of their negotiations by November 1, 2005.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary

Vernon A. Williams
Secretary